

14-1235

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor of conveying information regarding the regulatory requirements on banks and, in light of those requirements, the “best practices” missions should follow to establish and maintain successful banking relationships in the United States.

Over the past several years many foreign missions have faced challenges securing banking services. Today, there are fewer banks in the United States that are prepared or willing to service the financial needs of foreign missions than there were five years ago.

The Department wishes to emphasize for the Chiefs of Mission that, while some financial institutions have made or may in the future make the business decision to cease providing financial services to foreign missions or their members, such actions are internal business decisions by the financial institutions based on their determination of their ability or willingness to manage the operational burdens, costs, and risks associated with providing financial services to foreign missions. *The U.S. Government does not direct financial institutions to accept*

or maintain financial relationships, including for foreign missions and their members.

U.S. financial institutions must comply with the requirements of a number of U.S. laws and associated regulations in the conduct of their business, including when extending services to foreign missions. To respond to these requirements, financial institutions establish compliance programs to address the risks posed by customer relationships and the financial services they offer to their clients. These risks are determined by financial institutions' internal assessments, which are based on multiple factors determined by the financial institution.

Factors that financial institutions operating in the United States may consider when developing their compliance programs include, among others:

- the nature of the business relationship;
- the clientele (financial institutions often consider accounts where funds cross national borders – including those of foreign missions – as being higher risk); and
- the volume, value, and types of transactions, including international transactions.

Banks and regulators may consider foreign mission accounts to pose a heightened risk, including in the following circumstances:

- accounts are from countries that have been identified as higher risk;

- substantial currency transactions take place in the accounts;
- account activity is not consistent with the purpose of the account;
- accounts directly fund personal expenses of foreign nationals, including but not limited to expenses for college students; and
- official embassy business is conducted through personal accounts.

Limitations on Use of Foreign Mission Bank Accounts

As established in the Department's circular diplomatic note of March 25, 1987, the U.S. Government views the use of the premises or other property of foreign missions to engage in any activity that is not incidental to the maintenance and operation of the mission or post, or incidental to the performance of diplomatic and consular functions, as being incompatible with the status of those establishments. In this respect, in the view of the United States, the use of bank accounts belonging to or held by foreign missions for transactions unrelated to the maintenance, operation, or performance of diplomatic and consular functions is incompatible with the status of the missions and of the privileges and immunities accorded for the efficient performance of diplomatic and consular functions. Accordingly, the Chiefs of Mission are reminded of the obligation to ensure that bank accounts belonging to or held by their missions are not used for such activities.

Establishing and Maintaining a Banking Relationship

In accordance with U.S. laws and regulations, banks seek transparency, predictability, and responsiveness from their clients. As foreign mission accounts could potentially increase the customer-risk profile, important risk-mitigation processes might be enacted, including the negotiation of a Services Agreement specific to the mission.

With a better understanding of the compliance requirements placed on financial institutions, foreign missions can take steps to promote an ongoing relationship and avoid problems that may jeopardize the ability or willingness of a bank to continue its provision of services. In addition to concluding a Services Agreement, these steps can include, among others:

- carefully abiding by the terms of the Services Agreement(s);
- discussing with the bank, in advance, any desired changes to the Agreement;
- informing the bank, also in advance, of any transactions that might appear to be outside the Agreement;
- being responsive to requests from the bank for additional information about transactions.

If a bank cannot fully understand a foreign mission's account, the bank may view the mission's business as posing an unacceptable level of risk to the institution. The Department wishes to stress that multiple issues, including but not

limited to account activity that appears inconsistent with the purpose of the account, may result in an account's suspension or closure.

Opening an Account

U.S. financial institutions are expected to understand their customers and assess the risks of their relationships and accounts, including their foreign mission accounts, and take appropriate steps to manage risks. In line with international standards adopted by the Financial Action Task Force, U.S. laws and regulations require financial institutions to perform customer due diligence (CDD), including obtaining, verifying, and recording information that identifies persons who open an account. Additionally, financial institutions might request similar information for persons who use an account, are associated with an account, or are responsible for overseeing an account or relationship. Consistent with CDD requirements, missions seeking to open an account:

- will be asked to provide their mission's name, principal place of business, and other identifying information;
- should ensure that the bank has accurate contact information for all account holders, signatories (at least two are required), and managers;
- will be asked to provide information associated with their account's signatories, which may include their names, positions, addresses, dates of birth, and other information determined by the bank;

- may be asked to provide the bank with their Employer Identification Number; and
- will normally be asked by the bank to provide a completed IRS Form W-8EXP (Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding).

Employee Identification Number

An Employer Identification Number (EIN), also known as a Federal Tax Identification Number, is used to identify a business entity. As a general rule, foreign missions are not required to have an EIN. Foreign missions, however, are routinely asked to provide an EIN in connection with a variety of matters. In response to the practical and positive benefits associated with having an EIN, the Department generally encourages missions to obtain an EIN.

EINs are issued by the Internal Revenue Service. Information concerning their issuance is available at www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Employer-ID-Numbers-EINS.

Currency Transaction Reporting

The Bank Secrecy Act (BSA) requires that banks understand the nature of their customers' business, including expected transactions, and monitor their transactions for potentially unusual activity. Pursuant to the BSA, financial institutions are required to complete and file Currency Transaction Reports (CTRs)

for any transactions in currency equal to or greater than \$10,000. This may also include multiple transactions totaling more than \$10,000 during any one business day if they are by or on behalf of the same person or entity.

To facilitate compliance with this law, a foreign mission may be requested by its bank to provide additional information concerning a transaction or series of transactions. The completion of a CTR does not indicate any wrongdoing; however, any attempt to avoid or circumvent the reporting requirements is a violation of U.S. law.

Suspicious Activity Reporting

In certain circumstances banks are required to file a Suspicious Activity Report (SAR) with the Financial Crimes Enforcement Network, which is the United States' financial intelligence unit. Banks are required to file a SAR when they know, suspect, or have reason to suspect that transactions or other activity at their institution involve certain types of activity, including some criminal violations, transactions over certain monetary thresholds, and transactions that may involve attempts to evade regulatory or other lawful practices.

A SAR and any information that reveals the existence of a SAR are confidential and may only be disclosed to law enforcement and regulatory agencies, as permitted by statute. A bank may not disclose to a customer the contents of a SAR nor whether a SAR has been filed.

Foreign missions should strive to engage in predictable transactions and to answer a bank's transaction questions in a timely manner.

Recommended “Best Practices”

Representatives of the banking community have recommended concrete steps which foreign missions could follow to help maintain constructive relationships with banks in the United States. These best practices include:

- Anticipate questions about your banking practices and work with banks in a transparent, non-evasive manner;
- Notify banks of any unusual, non-routine transactions such as: large wire transfers into or out of an account, large cash requests, cash payments to individuals or other entities, or any other transaction activity that is out of the ordinary;
- Avoid dealing in cash – convert to other methods of payments/receipts such as credit or debit cards, wire transfers, or other electronic payment methods;
- Avoid sending or accepting wire transfers from other foreign governments without prior notification to the receiving bank as to the size, purpose, and rationale of the transfer;
- Understand CTR requirements. Attempts to avoid the CTR requirement for currency transactions of more than \$10,000 by making several smaller deposits (“structuring”) is against the law;

- Ensure the mission has at least two account signatories, reconciles accounts continuously (at least monthly), exercises good financial controls, and audits its bank activity at least annually; and
- Notify the bank immediately if any unusual or suspicious activity is detected.

How the Department Can Assist

The Office of Foreign Missions (OFM) stands ready to assist missions when they are seeking banking services by:

- arranging for the issuance of a letter confirming accreditation of the individuals and mission to the United States to give to the bank;
- advising individual missions and connecting them to other relevant offices in the Department;
- providing general information on banking and institutions that are involved in the foreign mission banking sector; and
- assisting missions, if they wish, in acquiring EIN.

For this purpose, missions may contact OFM at 202-895-3500, extension 5, or at OFMAccounts@state.gov.

Department of State,

Washington, July 11, 2014.

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